IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kate Energy Holdings Inc. v. Energetic Services Inc.,* 2025 BCSC 2286

Date: 20251120
Docket: S228482
Registry: Vancouver

Between:

Kate Energy Holdings Inc.

Plaintiff

And

Energetic Services Inc., ABC Corporation, John Doe and Jane Doe

Defendants

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Plaintiff:	G. Henderson
Counsel for the Defendant Energetic Services Inc.:	L.A. Wright
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. October 16, 2025
Place and Date of Judgment:	Vancouver, B.C. November 20, 2025

Table of Contents

INTRODUCTION **3**
POSITION OF THE PARTIES **4**
ANALYSIS **4**
DAMAGES IN TORT **4**
DAMAGES IN CONTRACT **9**
EQUITABLE INDEMNITY **11**
CONCLUSION **13**

Introduction

[1] Kate Energy Holdings Inc. ("Kate Energy") hired Energetic Services Inc. ("Energetic") to haul a trailer with liquified natural gas ("LNG") from Dawson Creek, British Columbia to Whitehorse, Yukon. Unfortunately, on October 22, 2019, Energetic's driver had an accident while driving the vehicle towing the trailer on the Alaskan Highway. The vehicle and trailer drove off the roadway and rolled over into a ditch. The trailer sustained damage that was beyond repair.

[2] The trailer was leased by Kate Energy from Clean Energy. It was a 2005 trailer. The lease included a term that if the trailer was damaged beyond repair while in Kate Energy's possession, Kate Energy must pay Clean Energy the actual cost of a new replacement LNG trailer (the "New Trailer Replacement Price"). While Energetic was aware that Kate Energy did not own the trailer, Kate Energy did not expressly advise Energetic of the existence of the lease and the terms of the lease, including the New Trailer Replacement Price if the trailer was damaged beyond repair. Clean Energy and Energetic had no relationship with each other.

[3] As a result of the damage to the trailer, Kate Energy has paid to Clean Energy the amount of $314,522.32 as the New Trailer Replacement Price. Energetic admits it is liable for the accident. The only dispute between the parties is the amount of damages Energetic must pay to Kate Energy. Kate Energy seeks the New Trailer Replacement Price. However, Energetic's position is the damages are limited to the actual cash value ("ACV") of the trailer, being a used trailer in a similar condition to the trailer at the time of the accident. The ACV of the trailer is lower than the New Trailer Replacement Price.

[4] The sole issue to be determined is whether Energetic owes Kate Energy the New Trailer Replacement Price or the ACV of the used trailer. The parties agree it is appropriate to proceed pursuant to R. 9-3 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 as a statement of special case to seek the opinion of the court. The parties have agreed if the court finds Energetic ought to pay the ACV, the amount of damages are to be assessed.

Position of the Parties

[5] Kate Energy seeks damages from Energetic in the amount of the New Trailer Replacement Price. Kate Energy argues due to Energetic's conduct, Kate Energy suffered a direct pecuniary loss in the amount of $314,522.32. Kate Energy argues it is entitled to damages in that amount under tort, contract and the common law of implied indemnity. Receipt of the New Trailer Replacement Price will place Kate Energy into the position it would have been in if not for the wrongful conduct of Energetic.

[6] Energetic argues the correct measure of damages is the value of a like-for-like replacement trailer, or the ACV. Energetic argues Kate Energy having to pay the New Trailer Replacement Price was not reasonably foreseeable and was not in the contemplation of the parties at the time the contract was made. Kate Energy having to pay for a new trailer was not a naturally arising consequence and was a special circumstance that needed to be communicated to Energetic. The payment for a brand-new trailer is a consequence too remote for Energetic to bear.

Analysis

[7] I will consider Kate Energy's arguments under tort, contract and the common law of implied indemnity.

Damages in Tort

[8] Kate Energy argues the measure of damages in tort is the amount which puts the plaintiff in the position it would have been in if the tort had not occurred. Kate Energy relies on the following passage at para. 32 from *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183:

> 32 …The essential purpose and most basic principle of tort law is that the plaintiff must be placed in the position he or she would have been in absent the defendant's negligence (the "original position"). However, the plaintiff is not to be placed in a position better than his or her original one. It is therefore necessary not only to determine the plaintiff's position after the tort but also to assess what the "original position" would have been. It is the difference between these positions, the "original position" and the "injured position", which is the plaintiff's loss.

[9] Kate Energy argues its original position without the tort was that it had not incurred payment of the New Trailer Replacement Price to Clean Energy. Its position after the tort was that Kate Energy incurred the payment of the New Trailer Replacement Price. The difference between these positions is Kate Energy's loss.

[10] However, Energetic argues Kate Energy's loss of the New Trailer Replacement Price was not reasonably foreseeable. Remoteness principles prevent Kate Energy's recovery of the price paid for a new trailer. Energetic relies on the following passage from *Mustapha v. Culligan of Canada Ltd*., 2008 SCC 27:

> [12] The remoteness inquiry asks whether "the harm [is] too unrelated to the wrongful conduct to hold the defendant fairly liable" (Linden and Feldthusen, at p. 360). Since *The Wagon Mound (No. 1)*, the principle has been that "it is the foresight of the reasonable man which alone can determine responsibility" (*Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co.*, [1961] A.C. 388 (P.C.), at p. 424).
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> [13] Much has been written on how probable or likely a harm needs to be in order to be considered reasonably foreseeable. The parties raise the question of whether a reasonably foreseeable harm is one whose occurrence is *probable* or merely *possible*. In my view, these terms are misleading. Any harm which has actually occurred is "possible"; it is therefore clear that possibility alone does not provide a meaningful standard for the application of reasonable foreseeability. The degree of probability that would satisfy the reasonable foreseeability requirement was described in *The Wagon Mound (No. 2)* as a "real risk", i.e. "one which would occur to the mind of a reasonable man in the position of the defendan[t] . . . and which he would not brush aside as far-fetched" (*Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co. Pty.*, [1967] A.C. 617 (P.C.), at p. 643).

[11] Energetic argues as it had no knowledge of the terms of the lease between Kate Energy and Clean Energy, it was not reasonably foreseeable to Energetic that damage to the trailer such that it is beyond repair would cost Kate Energy the price of a new trailer. It was not reasonably foreseeable that destroying a used trailer would mean payment for a new trailer, and not payment for a similar used trailer. Energetic's position is payment for a new trailer for damage to a used trailer was not a real risk and far-fetched to a reasonable person in Energetic's position.

[12] Kate Energy argues Energetic knew the trailer was not owned by Kate Energy. As such, it was reasonably foreseeable that the trailer was leased by Kate Energy. Kate Energy argues it was reasonably foreseeable to Energetic that damaging a trailer

leased by Kate Energy will lead to Kate Energy being held liable for payment. Kate Energy argues the starting point for assessment of damages is the replacement value, relying on *Nan v. Black Pine Manufacturing Ltd.*, 55 B.C.L.R. (2d) 241 at 9, 1991 CanLII 1144 (C.A.).

> The result of the application of these principles, in most cases involving the tortious loss of or damage to property, will be that replacement costs will at least be the starting point for the assessment of damages. Whether or not the damages based on such costs should then be adjusted, either for pre-loss depreciation or post-reinstatement betterment, will depend on what is reasonable in the circumstances.

[13] However, *Nan* did not deal with the concept of remoteness, as it did not arise. In *Nan,* the plaintiff's house was burned down in a fire that was caused by a hearth heater negligently installed by the defendant Black Pine Manufacturing Ltd. ("Black Pine"). The only issue on appeal was whether the plaintiff ought to receive as damages the price they paid to rebuild a brand-new home or the price of a used home. The home was bought by the plaintiff a year before the fire, and it was a 13-year-old home at the time of purchase. It was in that context the Court stated that in most cases the replacement cost would be the starting point for the assessment of damages: *Nan* at 9. Reasonable foreseeability and remoteness of damages were not in issue. There was no extraneous factor, unknown to Black Pine, which affected the price the plaintiff had to pay to rebuild their home.

[14] Both parties relied on *Singh v. Soper*, 2017 BCCA 335. In *Singh*, the plaintiff was driving a leased truck in the course of his business when he was involved in a collision with the defendant Robert Timothy Soper. Mr. Soper was driving the vehicle of D & R Sand and Gravel Ltd. in the course of his employment. Mr. Soper was at fault for the collision. The issue was what damages, if any, were owed to Mr. Singh: para. 1. Mr. Singh had applied for and received benefits under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 [*WCA*]. Mr. Singh also sued the defendants for damages. Mr. Soper and his employer had obtained a certificate under s. 257 of the *WCA* precluding an action for personal injury pursuant to s. 10(1) of the *WCA*. Mr. Singh was precluded from bringing an action against the defendants relating to his personal

injuries from the collision, but he was allowed to maintain an action for his business-related losses that do not relate to personal injuries: para. 3.

[15] After trial, Mr. Singh was awarded $41,340.64, of which $40,000 related to a deposit he had paid for the leased truck. The defendants appealed the $40,000 award: para. 4.

[16] After the collision, the lease was cancelled by the leasing company and Mr. Singh lost the $40,000 he had paid. Mr. Singh argued the trial judge misspoke when she stated that he asked the leasing company to cancel the lease, as his evidence was he only asked the leasing company to cancel the insurance on the truck, not the lease itself: para. 15. The Court of Appeal dealt with both scenarios: whether Mr. Singh asked for the lease to be cancelled or only the insurance to be cancelled.

[17] Under the first scenario where Mr. Singh asked for the lease to be cancelled, the Court of Appeal agreed that it was reasonably foreseeable that a person injured while driving their leased vehicle would ask the leasing company to cancel the lease to reduce his financial losses. This was a mutual termination of the lease by both parties. The Court of Appeal agreed it was reasonably foreseeable that the lessee may lose a deposit upon termination of the lease: para. 19.

[18] However, the Court of Appeal found under this scenario, the cancellation of the lease was due to Mr. Singh's personal injuries. Mr. Singh was not able to drive the truck due to his personal injuries and could not find someone else to drive the truck to generate revenue. This is contrasted with the situation if Mr. Singh only had minor injuries but the truck was damaged and not driveable. If Mr. Singh had chosen to cancel his lease in this circumstance, the resulting loss would have been foreseeable and not precluded by the provisions of the *WCA*. As the truck was able to be driven but Mr. Singh could not drive it due to his personal injuries, the Court of Appeal found while the cancellation of the lease was foreseeable, the deposit lost by Mr. Singh was related to his personal injuries, and unrecoverable due to the provisions of the *WCA*: para. 25.

[19] Under the second scenario, the Court of Appeal assumed Mr. Singh only asked for the insurance on the truck to be cancelled, and not the lease itself. The leasing company wrongly terminated the lease and Mr. Singh did not contest this wrongful termination. The Court of Appeal found this wrongful termination of the lease was not a reasonably foreseeable consequence of the collision. The Court of Appeal found "leased vehicles involved in accidents are routinely repaired without the lessor improperly bringing the lease to an end." The Court of Appeal found the wrongful termination of the lease by the leasing company was not reasonably foreseeable: para. 29. Under either scenario, Mr. Singh was not entitled to recover the loss of his deposit.

[20] Kate Energy relies on the first scenario in *Singh*, where the Court of Appeal found the cancellation of the lease and the loss of the deposit was reasonably foreseeable. Energetic relies on the second scenario in *Singh*, where the Court of Appeal found the wrongful termination of the lease after the accident was not reasonably foreseeable, as vehicles are often repaired and leases not cancelled after accidents.

[21] In my view, Kate Energy's reliance on the first scenario in *Singh* misses a key element. Under the first scenario, Mr. Singh had requested the lease to be cancelled, and the leasing company agreed to cancel it. If both parties agree to cancel the lease, the loss of a deposit is reasonably foreseeable. It is the action of Mr. Singh in asking the lease to be cancelled that made the loss of the deposit reasonably foreseeable. If Mr. Singh did not ask for the lease to be cancelled, the cancellation of the lease and the loss of the deposit are not reasonably foreseeable, as found in the second scenario. At the end of the day, *Singh* is an application of the concept of reasonable foreseeability.

[22] Kate Energy also argues a plaintiff does not need to show the exact damage or exact manner of occurrence was reasonably foreseeable but only needs to show the "class or character" of damage was foreseeable generally: *R. v. Côté et al*, [1976] 1 S.C.R. 595 at 604, 1974 CanLII 31. Hence, Kate Energy argues it was reasonably

foreseeable that if the trailer was damaged, Kate Energy not being the owner of the trailer would be liable to replace the trailer with a new trailer. Having to buy a new trailer is a class or character of damage that would be reasonably foreseeable.

[23] A determination of foreseeability is a question of fact: *Singh* at para. 18, citing *Chambers v. Goertz*, 2009 BCCA 358 at para. 49. In my view, I do not find Kate Energy having to pay for a new trailer was a reasonably foreseeable risk. It was not a risk that would have occurred to the mind of a reasonable person in the position of Energetic. Energetic was towing a used 14-year-old trailer. There is nothing in the circumstances that would have brought home to Energetic that if it damaged the used trailer, Energetic would have to pay for a new trailer. Having to pay for a brand-new trailer as a result of damaging a used trailer is a risk that a reasonable person would brush aside as far-fetched. This is underscored by Clean Energy choosing to include in its lease terms a specific guarantee that if the used trailer was damaged beyond repair, Kate Energy had to pay the New Trailer Replacement Price.

Damages in Contract

[24] Kate Energy and Energetic had an agreement for Energetic to transport the trailer, one of the implied terms of the agreement being Energetic would not damage the trailer. Kate Energy argues the agreement was breached as Energetic damaged the trailer. Kate Energy argues it is entitled to compensatory damages for Energetic's breach of contract, which is the New Trailer Replacement Price which Kate Energetic paid to Clean Energy. Kate Energy argues it is entitled to be put into the position it would be in if Energetic had performed the agreement.

[25] The issue is how to measure the damages to which Kate Energy is entitled to for breach of the agreement. Damages are what may be reasonably arising naturally from the breach or may have been in the reasonable contemplation of the parties at the time the contract was made. The Supreme Court of Canada in *Fidler v. Sun Life*

Assurance Co. of Canada, 2006 SCC 30 explained the two branches of contractual damages at paras. 27 and 29:

> 27 Damages for breach of contract should, as far as money can do it, place the plaintiff in the same position as if the contract had been performed. However, at least since the 1854 decision of the Court of Exchequer Chamber in *Hadley v. Baxendale* (1854), 9 Ex. 341, 156 E.R. 145, at p. 151, it has been the law that these damages must be "such as may fairly and reasonably be considered either arising naturally . . . from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties".
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> …
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> 29 In *Hadley v. Baxendale*, the court explained the principle of reasonable expectation as follows:
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> > Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such a breach of contract. [Emphasis added; p. 151.]

[26] In my view, there were "special circumstances" here which were not communicated to Energetic nor accepted by it. This special circumstance was the requirement of Kate Energy to pay to Clean Energy the cost of a brand-new trailer if the trailer was damaged beyond repair. Having to pay for a new trailer for damaging a used trailer is in my view, not a naturally arising consequence in the ordinary course of business. This fell under the second branch in *Hadley*, and Kate Energy had an obligation to communicate this to Energetic if it wanted to bind Energetic. Energetic was not advised of this consequence. This consequence was not in the reasonable contemplation of the parties at the time the agreement was formed.

[27] I agree with Energetic it would be unfair to hold it liable for the price of a new trailer, as Energetic was not aware of the terms of the lease between Kate Energy and Clean Energy. If Energetic had been aware of the term requiring the purchase of a new trailer if damage beyond repair occurred, Energetic may not have agreed to haul the trailer. In these circumstances, the payment for a new trailer is too remote to be recoverable.

Equitable Indemnity

[28] In addition to claims under tort and breach of contract, Kate Energy also claims a common law right to indemnity. Kate Energy relies on jurisprudence from Alberta, Ontario and Newfoundland.

[29] Kate Energy relies on *Addison & Leyen Ltd v. Fraser Milner Casgrain LLP*, 2014 ABCA 230:

> [22] The leading authority on the common law of contribution and indemnity is *Birmingham and District Land Co v London and Northwestern Railway Co* (1886), 34 Ch D 261 (CA). In that early decision, the English Court of Appeal broadly defined the right to indemnity under the common law as a direct right to reimbursement which may arise: (1) by express contract, if provided in the terms of a contract between the parties; (2) by implied contract, if the parties intended such indemnity; or (3) by implication, if the circumstances demand a legal or equitable duty to indemnify, by which the law recognizes an assumed promise by a person to do what, under the circumstances, he ought to do (at 274). The court identified certain circumstances where the law may imply a contract to indemnify, such as relationships of principal and agent and of co-trustees.

[30] Kate Energy relies on *McFee v. Joss*, [1925] 2 D.L.R. 1059 at 1064, 1925 CanLII 386 (Ont. C.A.), as an early statement of the law in Canada:

> …[A]n implied contract of indemnity arises in favour of a person who, without fault on his part, is exposed to liability and compelled to pay damages on account of the negligence or tortious act of another, provided the parties were not joint tort-feasors in such a sense as to prevent recovery; that is where the act is not clearly illegal it itself. This right of indemnity is based upon the principle that everyone is responsible for his own negligence, and if another is by a judgment of a Court, compelled to pay damages which ought to have been paid by the wrongdoer, such damages may be recovered from the wrongdoer. I am also of the opinion that such right of indemnity exists independently of the statute, and whether or not contractual relations exist between the parties, and

> whether or not the negligent person owed the other a special or particular duty not to be negligent.

[31] In *Ryan v. Dew Enterprises Limited*, 2014 NLCA 11 at para. 54, the Newfoundland Court of Appeal summarized the applicable legal principles in implying a right of indemnity at common law:

> [54] A claim for indemnity is a claim that another party save the indemnity-claimant harmless against loss or damage which the indemnity-claimant has incurred or suffered or will incur or suffer at the hands of another, and to reimburse the claimant in respect of such loss or damage. The claim may arise from an express contract, by implication of law or from statute. An example of a claim to indemnity arising from implication of law is where an act is done at the request of another, the act turns out to be injurious to a third party and in consequence of doing the act the doer incurs liability to the third party (*Birmingham and District Land Co. v. London and North Western Railway Co.* (1886), 34 Ch. D. 261 (C.A.)). Other diverse examples include: (i) where an agent incurs loss while lawfully carrying out the mandate of his or her principal; (ii) where a principal suffers loss by incurring liability to a third party as a result of the wrongful actions of his or her agent or employee; (iii) where a trustee causes a co-trustee to incur costs through the trustee's negligent management of the trust; and (iv) where an obligation arises in equity from the relationship between the parties, such as between trustee and beneficiary.

[32] Kate Energy argues it has met the requirements to claim in indemnity. Energetic caused damage to the trailer, and Kate Energy as the innocent party was compelled to pay Clean Energy the New Trailer Replacement Price. As the innocent party, Kate Energy claims it ought to be indemnified by Energetic, who was the wrongdoer.

[33] Energetic argues the doctrine of equitable indemnity is to be applied narrowly, citing *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, where the Supreme Court of Canada stated:

> [147] Equitable indemnity is a narrow doctrine, confined to situations of an express or implied understanding that a principal will indemnify its agent for acting on the directions given. As stated in *Parmley v. Parmley*, [1945] S.C.R. 635, claims of equitable indemnity "proceed upon the notion of a request which one person makes under circumstances from which the law implies that both parties understand that the person who acts upon the request is to be indemnified if he does so" (p. 648, quoting Bowen L.J. in *Birmingham and District Land Co. v. London and North Western Railway Co.* (1886), 34 Ch. D. 261, at p. 275.

[34] In this case, if Clean Energy had sued Energetic for negligence, if successful Clean Energy would have only received the cost of a used trailer, as the payment for a new trailer was not a damage that was reasonably foreseeable. Energetic argues if the Court accepts Kate Energy's argument that it ought to be indemnified the cost of a new trailer, then Kate Energy would receive higher damages from Energetic than Clean Energy would receive from Energetic, if Clean Energy sued Energetic in tort.

[35] I am not persuaded that Kate Energy has a claim in equitable indemnity. There is no express agreement of indemnity. There is no evidence of any implied term of indemnity between Kate Energy and Energetic. There are no circumstances where by implication there ought to be a duty to indemnify, such as between a principal and agent or as between co-trustees. There are no circumstances that permit a finding that Energetic should indemnify Kate Energy for its loss in relation to damage to the trailer.

[36] In any event, if there is a claim of indemnity, I agree with Energetic such a claim would be limited to the price for a used trailer. Indemnity is said to occur where an innocent party is forced to pay damages that ought to have been paid by the wrongdoer, and those damages may be recovered from the wrongdoer: *McFee* at 1064. In this case, under tort principles, the damages Energetic the wrongdoer would have had to pay Clean Energy would have been the price of the used trailer. Without the lease term calling for the payment of a new trailer, the usual measure of damages Clean Energy would have been able to recover from Kate Energy or Energetic would have been the ACV of the used trailer.

Conclusion

[37] Under tort, contract or equitable indemnity, the amount of damages Energetic has to pay is the same—the amount of the ACV of the trailer.

"Chan J."